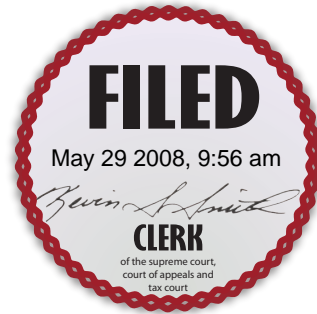


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JERRY SHIPLEY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 68A01-0711-CR-503

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APPEAL FROM THE RANDOLPH CIRCUIT COURT  
The Honorable Marianne Vorhees, Special Judge  
Cause No.68C01-0306-FC-26

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**May 29, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issue

Following a jury trial, Jerry Shipley was convicted of child molesting, a Class C felony. Shipley appeals his conviction, contending that there was insufficient evidence to support his conviction. Concluding that the evidence is sufficient, we affirm.

### Facts and Procedural History

Shipley is J.C.'s grandfather. J.C. and her two sisters would often stay the night at Shipley's house. After Shipley's wife died when J.C. was nine or ten years old, Shipley and the three girls would share one bed when the girls spent the night. J.C. testified that on at least two occasions, as she lay with her back to Shipley in the bed, she felt Shipley rub his penis against her leg. Shipley denied touching J.C., even accidentally.

The State charged Shipley with child molesting as a Class C felony.<sup>1</sup> A jury found Shipley guilty and he was sentenced to four years at the Department of Correction. Shipley now appeals his conviction.

### Discussion and Decision

#### I. Standard of Review

When reviewing a claim of insufficient evidence, we will not reweigh evidence or judge witnesses' credibility. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. Id. We will affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. Id.

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<sup>1</sup> Shipley was charged with two additional counts of child molesting, both Class C felonies, for acts allegedly committed against two other victims. These counts were dismissed prior to trial pursuant to Shipley's motion.

Our supreme court has recently summarized our standard of review when assessing claims of insufficient evidence:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original).

## II. Sufficiency of the Evidence

To convict Shipley of child molesting as charged, the State was required to prove that he performed a touching of J.C., who was then under fourteen years of age, with the intent to arouse or to satisfy Shipley's sexual desires. See Ind. Code § 35-42-4-3(b). Shipley challenges the State's evidence on the element of intent.

Mere touching alone is not sufficient to prove the crime of child molesting. Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000). The State must also prove beyond a reasonable doubt that the act of touching was accompanied by the specific intent to arouse or satisfy sexual desires. Clark v. State, 695 N.E.2d 999, 1002 (Ind. Ct. App. 1998), trans. denied. "The intent to arouse or satisfy the sexual desires of the child or the older person may be established by circumstantial evidence and may be inferred [by the

fact finder] ‘from the actor’s conduct and the natural and usual sequence to which such conduct usually points.’” Kanady v. State, 810 N.E.2d 1068, 1069-70 (Ind. Ct. App. 2004) (quoting Nuerge v. State, 677 N.E.2d 1043, 1048 (Ind. Ct. App. 1997), trans. denied).

J.C. testified that Shipley laid in bed with his front to her back and rubbed his penis on her leg for several minutes at a time. She was unsure if he ejaculated, but she testified that his penis was hard. Although J.C.’s testimony did not indicate that Shipley touched her genitals in any way, the fact that he rubbed his genitals on her leg could lead a reasonable fact finder to conclude that he had the intent to achieve sexual gratification for himself. See Altes v. State, 822 N.E.2d 1116, 1121-22 (Ind. Ct. App. 2005) (holding there was sufficient evidence of intent to arouse when victim testified defendant rubbed her feet, legs, and bottom with his hand: “this touching is close enough to the female genitals as to constitute the source of sexual gratification”), trans. denied; Nuerge, 677 N.E.2d at 1049 (holding there was sufficient evidence of intent when testimony showed defendant kissed victim’s inner thigh and placed his hand inside the bottom of her shorts because “the inner thigh is in close proximity to the genitals, an erogenous zone, it may itself be the source of sexual gratification”). Shipley asks us to reweigh the evidence, and this we will not do.

### Conclusion

The State presented sufficient evidence to prove Shipley committed child molesting, a Class C felony. Shipley’s conviction is affirmed.

Affirmed.

BAKER, C.J., and RILEY, J., concur.